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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,444	12/10/2003	Gerhard Rinklin	028987.52806US	5123
23911	7590	03/25/2005	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			PHAN, HAU VAN	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/731,444

Applicant(s)

RINKLIN, GERHARD

Examiner

Hau V Phan

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,9-11,13-15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3,7-8,12,16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Acknowledgment*

1. The amendment filed on 2/16/2005 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-2, 4-6, 9-11, 13-15 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Ebinger et al. (6,595,318).**

Ebinger et al. in figures 1-2, disclose a rear covering part of a motor vehicle having a tail pipe orifice fastened to the rear covering part for an exhaust system of a motor vehicle, having a bordered passage opening for the tail pipe orifice. The tail pipe orifice comprises an air inlet section including an inlet opening, which communicates in a non-contacting manner with a tail pipe (2) of the exhaust system or the entirety of the air inlet section is spaced apart from the tail pipe in a non-contact manner and extends over the tail pipe. The inlet opening situated at a radial distance from the tail pipe. Whereby heat transfer is minimized between the tail pipe and the tail pipe orifice. The

tail pipe orifice also comprises an outlet opening situated downstream with respect to the inlet opening, a transition section (12) situated between the inlet opening and the outlet opening and tapering in its cross-section, and an interior cross-section of the inlet opening which is larger than the exterior cross-section of the tail pipe, and wherein a passage cross-section (8) along an entire length of the tail pipe orifice is larger than an exterior cross-section of the tail pipe of the exhaust system.

Regarding claims 2 and 15, Ebinger et al. disclose the tail pipe orifice, which is constructed as a double-walled pipe with a jacket for air can flow.

Regarding claims 4 and 17, Ebinger et al. disclose a second air outlet opening provided between the tail pipe orifice and the rear covering part.

Regarding claims 5 and 18, Ebinger et al. disclose a covering having at least one breakthrough, arranged in the second air outlet opening.

Regarding claims 9 and 19-20, Ebinger et al. disclose the tail pipe orifice that is constructed as a double tail pipe orifice and two pipe sections are arranged side-by-side or above one another.

Regarding claim 10, Ebinger et al. disclose the covering having a frame which surrounds the tail pipe orifice and which is used for the fastening of the covering to the rear covering part and reaches over the mouth edge of the passage opening as a shielding orifice.

Regarding claim 11, Ebinger et al. disclose the rear covering part, which is at least one of made of a plastic material and is painted and coated.

Regarding claim 14, Ebinger et al. disclose inlet opening communicates with the tail pipe, extends over the tail pipe and is situated at a radial distance from the tail pipe.

***Allowable Subject Matter***

4. Claims 3, 7, 8, 12 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed 2/16/2005 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wherein the tail pipe orifice is spaced apart from and does not contact the tail pipe are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Noticed: Ebinger et al. in figure 1, disclose the entirety of the air inlet section is space apart from the tail pipe in a non-contact manner. The inlet section is different from the pipe orifice section.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan  
Examiner  
Art Unit 3618

*Hau Phan*  
*3/18/05*